



Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS-SC-20-0093; SC21-925-1 PR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Desert Grape Administrative Committee (Committee) to increase the assessment rate established for the 2021 and subsequent fiscal periods. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; or Internet: <https://www.regulations.gov>. Comments should reference the document number and the date and page

number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<https://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Management, Program Analyst, California Marketing Field Office or Andrew Hatch, Deputy Director, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559)487-5901 or email: BiancaM.Bertrand@usda.gov or Andrew.Hatch@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202)720-8938, or email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to

carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. Part 925 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of producers and handlers of grapes operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, grape handlers in a designated area of southeastern California are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all

assessable grapes for the 2021 fiscal period and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15) (A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such a handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate from \$0.020 per 18-pound lug of assessable grapes handled, the rate that was established for the 2018 and subsequent fiscal periods, to \$0.040 per 18-pound lug of assessable grapes handled for the 2021 and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2018 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$0.020 per 18-pound lug of assessable grapes handled. That assessment rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 4, 2020, and unanimously recommended expenditures of \$85,500, and an assessment rate of \$0.040 per 18-pound lug of assessable grapes handled for the 2021 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were \$121,100. The proposed assessment rate of \$0.040 is \$0.020 higher than the rate currently in effect. The Committee recommended

increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal period, as well as add funds to the contingency reserve. Funds in the reserve are expected to be approximately \$50,100 at the end of the 2021 fiscal period, which is within the Order's requirement to carryover no more than approximately one fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2021 fiscal period include \$50,000 for management and compliance expenses; \$19,500 for direct office expenses; \$16,000 for shared office, facilities, and maintenance expenses.;

Budgeted expenses for these items for the 2020 fiscal period were \$56,000 for management and compliance expenses; \$20,700 for direct office expenses; \$15,900 for shared office, facilities, and maintenance expenses; and \$28,500 for production research.

The Committee determined that the contingency reserve fund had grown too large, so they used \$37,100 from it to help fund the 2020 budget rather than raise their assessment rate.

The Committee derived the recommended assessment rate by considering anticipated expenses; an estimated crop of 2.5 million 18-pound lugs of assessable

grapes; and the amount of funds available in the authorized contingency reserve. Income derived from handler assessments, calculated at \$100,000 (2.5 million 18-pound lugs of assessable grapes multiplied by \$0.040 assessment rate), would be adequate to cover budgeted expenses of \$85,500, as well as add a small amount of funds (\$14,500) back into the contingency reserve. Funds in the reserve are estimated to be \$50,100 at the end of the 2021 fiscal period.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would

be undertaken as necessary. The Committee's 2021 fiscal period budget, and those for subsequent fiscal periods, would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 10 handlers subject to the regulation under the Order, and approximately 21 producers of grapes in the production area. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$1,000,000, and small agricultural service firms have been defined as those

whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the Committee data, USDA Market News Shipping Point Data, and National Agricultural Statistics Service (NASS), the national average producer price data released in 2020 for the 2019 production year was approximately \$10.62 per 18-pound lug. Assuming that the 2020 producer price remains the same as that for 2019, and using Committee data for the 2020 total grape production of 2,448,021 18-pound lugs, the total 2020 value of the grape crop was \$25,997,983 (2,448,021 18-pound lugs times \$10.62 per 18-pound lug equals \$25,997,983). Dividing the total grape crop value by the estimated number of producers (21) yields an estimated average receipt per producer of \$1,237,999, which is above the SBA threshold for small producers.

According to USDA Market News data, the reported terminal price for 2020 for grapes ranged between \$18.95 to \$24.95 per 18-pound lug. The average of this range is \$21.95 (\$18.95 plus \$24.95 divided by 2). Multiplying the 2020 grape total production of 2,448,021 18-pound lugs by the estimated average price per 18-pound lug of \$21.95 equals \$53,734,061.

Dividing this figure by 10 regulated handlers yields estimated average annual handler receipts of

\$5,373,406, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, the majority of producers may be considered large entities, and handlers of grapes in the production area may be classified as small entities.

Based upon information from NASS, the grower price reported for grapes in 2019 was \$1,180 per ton (\$10.62 per 18-pound lug) of grapes. In order to determine the estimated assessment revenue as a percentage of the total grower revenue, we calculate the assessment rate (\$0.040 per 18-pound lug) times the estimated production (2,500,000 18-pound lugs), which equals the assessment revenue of \$100,000.

The grower revenue is calculated by multiplying the grower price of \$10.62 per 18-pound lug times the estimated production (2,500,000 18-pound lugs), which equals the grower revenue of \$26,550,000.

In the final step, dividing the assessment revenue by the grower revenue indicates that, for the 2021 fiscal period, the estimated assessment revenue as a percentage of total grower revenue would be about 0.38 percent.

This proposal would increase the assessment rate collected from handlers for the 2021 and subsequent fiscal periods from \$0.020 to \$0.040 per 18-pound lug

of assessable grapes handled. The Committee unanimously recommended 2021 expenditures of \$85,500 and an assessment rate of \$0.040 per 18-pound lug of assessable grapes handled. The proposed assessment rate of \$0.040 per 18-pound lug of assessable grapes handled is \$0.020 higher than the current rate. The volume of assessable grapes for the 2021 fiscal period is estimated to be 2,500,000 18-pound lugs. Thus, the \$0.040 per 18-pound lug of assessable grapes handled should provide \$100,000 in assessment income (2,500,000 multiplied by \$0.040). Income derived from handler assessments would be adequate to cover budgeted expenses for the 2021 fiscal period.

The major expenditures recommended by the Committee for the 2021 fiscal period include \$50,000 for management and compliance expenses; \$19,500 for direct office expenses; \$16,000 for shared office, facilities, and maintenance expenses. Budgeted expenses for the 2020 fiscal period were \$56,000 for management and compliance; \$20,700 for direct office; \$15,900 for shared office, facilities, and maintenance; and \$28,500 for production research.

The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal period, while adding funds to its financial reserve.

This action would maintain the Committee's reserve balance at a level that the Committee believes is appropriate and meets the requirements of the Order.

Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.020 per 18-pound lug of assessable grapes handled, and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate would fully fund budgeted expenses and add funds to the contingency reserve.

This proposed rule would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the November 4, 2020, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit

comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large southeastern California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

<https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 45-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 925 as follows:

PART 925 - GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA.

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 925.215 is revised to read as follows:
§ 925.215 Assessment rate.

On and after January 1, 2021, an assessment rate of \$0.040 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Bruce Summers, Administrator,
Agricultural Marketing Service.

[FR Doc. 2021-06222 Filed: 3/25/2021 8:45 am; Publication Date: 3/26/2021]